



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.07.1995
COM(95) 319 final - COD 476

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the use of standards for the transmission

of television signals

(including repeal of Directive 92/38/EEC)

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

EXPLANATORY MEMORANDUM

The proposed Directive of the European Parliament and Council comes under the co-decision procedure (Article 189b of the EC Treaty).

Article 189b.2(d) requires the Commission to express its Opinion on the amendments proposed by the European Parliament in its second reading.

The Commission hereby presents its opinion on the six amendments proposed by the European Parliament. In accordance with Article 189a (second paragraph) the Commission also presents a modified proposal incorporating the amendments which the Commission has accepted.

1. BACKGROUND

On 16 November 1993 the Commission presented to the European Parliament and to the Council a proposal¹ for a Directive of the European Parliament and of the Council on the use of standards for the transmission of television signals based on Articles 57(2), 66 and 100a of the Treaty.

The European Parliament delivered a favourable opinion in a first reading on 19 April 1994².

The Economic and Social Committee gave a favourable opinion on this proposal on 23 March 1994³.

On 25 October 1994 the Commission presented to the Council a Modified Proposal incorporating those European Parliament amendments⁴ accepted by the Commission.

On 22 December 1994 the Council, acting in accordance with Article 189b of the Treaty adopted a Common Position on the Proposed Directive⁵.

The European Parliament voted on the second reading on 13 June 1995, adopting a favourable resolution which included six amendments to the Common Position.

2. PURPOSE OF THE DIRECTIVE

The proposal for a Directive on the use of standards for the transmission of television signals has the objectives of:

- creating a regulatory environment of standards for the transmission of advanced television broadcast signals;
- facilitating the connection of peripherals to television sets in a harmonized manner throughout the Union;

¹ OJ No C 341, 18.12.1993, p. 18.

² OJ No C128, 9.5.1994, p. 54

³ OJ No C148, 30.5.1994, p.1

⁴ COM (94) 455 FINAL - COD 476

⁵ ECO 276, CODEC 80, 22.12.1994

- creating a common framework throughout the Union for conditional access to digital Pay-TV services;
- promoting the transmission of wide screen television services on cable television networks.

3. POSITION OF THE COMMISSION ON THE EP AMENDMENTS

In considering the amendments proposed by the European Parliament on second reading, the Commission can accept those which:

- i) are consistent with the Commission's initial proposal, and/or
- ii) are consistent with the Commission's position on the first reading of the European Parliament, and/or
- iii) clarify the text in a useful way.

3.1 Amendments accepted by the Commission

The European Parliament proposes six amendments following intensive consultation with the involved market parties. Since these amendments achieved a large majority in the Parliament and since they are consistent with the Commission's intentions expressed in its previous amended proposal, the Commission can accept **all six** amendments. The rationale for this position is set out in detail below.

- 3.1.1 The Commission can accept the value of affirming the importance of encouraging entrepreneurs to invest in conditional access services provision and can accept that such an idea is expressed in a recital as part of amendment 5.
- 3.1.2 The Commission agrees that reference to the threat of piracy and the necessity for appropriate anti-piracy legislation is appropriate and therefore accepts amendment 1 (a new recital).
- 3.1.3 The Commission agrees that it is helpful to refer to the general principle of open access to networks and therefore accepts amendment 2 (a new recital).
- 3.1.4 The Commission accepts that the facilitation of wide-screen television services on digital networks in a manner compatible with market and consumer interests is a desirable objective and therefore accepts amendment 3 (new text on Article 1) on the understanding that it is not intended to place Member States under binding obligations.
- 3.1.5 The Commission can accept the definition of a wide-screen television service and the identification of the 16:9 aspect ratio as the standard in this connection. It also supports the concept of digital networks being capable of distributing wide-screen television services. It can therefore accept amendment 4 (new text in Article 2).

3.1.6 In amendment 5 the European parliament adds new elements to Article 4 of the Common Position dealing with conditional access to digital television. These new elements, which result from consultation between the Parliament and the market parties, include:

- the inclusion of provisions relating to television signals transmitted 'in the clear' i.e. unscrambled;
- the requirement that commercial relations between conditional access service providers and broadcasters be conducted on fair, reasonable and non-discriminatory terms;
- the requirement that separate accounts are kept for conditional access businesses;
- the requirement that providers of digital television services publish a list of tariffs and ;
- the availability in Member States of appropriate dispute resolution procedures.

The Parliament made editorial changes to clarify the previous text in some instances.

The Commission can accept this amendment as it adds new consensus elements of fairness, transparency and dispute resolution to the previous industry consensus on conditional access.

3.1.7 The Commission can accept amendment 6 which makes drafting changes to the text of Article 6 of the Common Position as these changes add useful clarification.

4. CONCLUSION

4.1 In accordance of Article 189b, paragraph 2 of the EC Treaty, the Commission hereby gives its Opinion on the amendments adopted by the European Parliament on second reading. The Commission accepts all six amendments proposed by the Parliament as they are fully compatible with the goals of this Directive. The modified proposal (annex) incorporates these amendments. In accordance with Article 189a (second paragraph) the Commission hereby modifies its proposal.

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the use of standards for the transmission
of television signals

(presented by the Commission in accordance with Article 189a, second paragraph, of the EC Treaty)

EXPLANATORY MEMORANDUM

The proposed Directive of the European Parliament and Council comes under the co-decision procedure (Article 189b of the EC Treaty).

Article 189b.2(d) requires the Commission to express its Opinion on the amendments proposed by the European Parliament in its second reading.

The Commission hereby presents its opinion on the six amendments proposed by the European Parliament. In accordance with Article 189a (second paragraph) the Commission also presents a modified proposal incorporating the amendments which the Commission has accepted.

Recital 15a (new)

Whereas the operators of conditional access services should be entitled to earn a return on their investments and for the provision of services to broadcasters as an incentive to continue to invest;

Recital 17a (new)

Whereas in the European audiovisual digital environment, the scope for piracy will increase, with negative consequences for operators and programme providers, and whereas the introduction and enforcement of efficient anti-piracy legislation at the European level will become increasingly necessary.

Recital 19a (new)

Whereas the Presidency's conclusions at the G7 Conference on the Information Society held in Brussels on 25-26 February 1995 highlighted the need for a regulatory framework ensuring open access networks and respect for competition rules;

Article 1, second paragraph (new)

Member States shall facilitate the transfer of wide-screen television services already in operation to digital transmission networks open to the public, in particular pursuant to Directive 92/38/EEC and Decision 93/424/EEC, in order to protect the interests of operators and television viewers who have invested to produce or receive such services.

Article 2

All television services transmitted to viewers in the Community whether by cable, satellite or terrestrial means shall:

- (a) if they are in wide-screen format and 625 lines, and are not fully digital, use the 16:9 D2-MAC transmission system, or a 16:9 transmission system which is fully compatible with Pal OR Secam;

- (b) if they are in high definition, and are not fully digital, use the HD-MAC transmission system;

- (c) if they are fully digital, use a transmission system which has been standardized by a recognized European standardization body. In this context, a transmission system comprises the following elements: formation of programme signals (source coding of audio signals, source coding of video signals, multiplexing of signals) and adaptation for transmission media (channel coding, modulation and, if appropriate, energy dispersal).

All television services transmitted to viewers in the Community whether by cable, satellite or terrestrial means shall:

- (a) if they are in wide-screen format and 625 lines, and are not fully digital, use the 16:9 D2-MAC transmission system, or a 16:9 transmission system which is fully compatible with Pal OR Secam;

a wide-screen television service consists of programmes produced and edited to be displayed on a wide-screen format;

the 16:9 format is the reference format for wide-format television services;

- (b) if they are in high definition, and are not fully digital, use the HD-MAC transmission system;

- (c) if they are fully digital, use a transmission system which has been standardized by a recognized European standardization body. In this context, a transmission system comprises the following elements: formation of programme signals (source coding of audio signals, source coding of video signals, multiplexing of signals) and adaptation for transmission media (channel coding, modulation and, if appropriate, energy dispersal);

fully digital transmission networks open to the public for the distribution of television services must be capable of distributing wide-screen format services.

Article 4

In relation to conditional access to digital Pay-TV services broadcast to viewers in the Community the following conditions shall apply:

- (a) all consumer equipment, for sale or rent or otherwise made available in the community, capable of descrambling digital television signals, shall possess capability to allow the descrambling of such signals according to the common European scrambling algorithm as administered by a recognized European standardization body;

- (b) conditional access systems operated on the market in the Community shall have the necessary technical capability for cost effective transcontrol at cable head-ends allowing the possibility for full control by cable television operators at local or regional level of the services using such conditional access systems;

In relation to conditional access to digital television services broadcast to viewers in the Community, irrespective of the means of transmission, the following conditions shall apply:

- (a) all consumer equipment, for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, shall possess the capability:

- to allow the descrambling of such signals according to the common European scrambling algorithm administered by a recognized European standardization body;

- to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement;

- (b) conditional access systems operated on the market in the Community shall have the necessary technical capability for cost effective transcontrol at cable head-ends allowing the possibility for full control by cable television operators at local or regional level of the services using such conditional access systems;

Article 4 (contd.)

(ba) Member States shall take all the necessary measures to ensure that the operators of conditional access services, irrespective of the means of transmission, who produce and market access services to digital television services:

- offer to all broadcasters, on a fair, reasonable and non-discriminatory basis, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers authorized by means of decoders administered by the service operators, and comply with Community competition law, in particular if a dominant position appears;

- keep separate financial accounts regarding their activity as conditional access providers;

Broadcasters shall publish a list of tariffs for the viewer which takes into account whether associated equipment is supplied or not;

A digital television service may only take advantage of these provisions if the services offered comply with the European legislation in force;

(c) in connection with the inclusion by manufacturers of conditional access systems in consumer equipment:

- where conditional access systems are licensed to manufacturers, this shall be done on fair, reasonable and non-discriminatory terms;
- licensing or other provision of conditional access systems to manufacturers shall be done in such a way as not to prevent the inclusion of either another conditional access system or a common interface, provided that relevant security conditions relating to the conditional access system are met.

(c) when granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems shall ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights shall not subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of

- a common interface allowing connection with several other access systems; or

- means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions regarding the security of transactions of conditional access system operators;

Where television sets contain an integrated digital decoder such sets should allow for the option of fitting at least one standardized socket permitting connection of conditional access and other elements of a digital television system to the digital decoder.

(ca) without prejudice to any action that the Commission or any member State may take pursuant to the Treaty, Member States shall ensure that any party having an unresolved dispute concerning the application of the provisions under rules established in this Article shall have easy and, in principle inexpensive, access to appropriate dispute resolution procedures with the objective of resolving such disputes in a fair, timely and transparent manner.

This procedure shall not preclude action for damages from either side. If the Commission is asked to give its opinion on the application of the Treaty, it shall do so as a matter of urgency.

Article 6

Before 1 July 1997 and every two years thereafter, the Commission shall review this Directive and submit a report to the European Parliament, to the Council and to the Economic and Social Committee on market and technological developments, in particular relating to developments in digital technology and also to market developments on conditional access to digital television services. If necessary, the Commission shall make proposals to the Council to adapt this Directive to these developments.

Before 1 July 1997 and every two years thereafter, the Commission shall examine the implementation of this Directive and the development of the market for digital television services throughout the European Union and submit a report to the European Parliament, to the Council and to the Economic and Social Committee. This report shall cover market developments, in particular relating to developments in digital technology and services and also to technical and commercial market developments on conditional access to digital television services. If necessary the Commission shall make proposals to the Council to adapt this Directive to these developments.

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